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MINEBEA CO., LTD., <u>et al.</u> ,)	
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Plaintiffs,)	
)	
v.)	Civil Action No. 97-0590 (PLF)
)	
GEORG PAPST, <u>et al.</u> ,)	
)	
Defendants.)	
)	

On February 13, 2004, Special Master David Plant, after considering submissions from the parties, including reports of physicians, ruled that the depositions of Georg Papst and Hans Dieter Papst should go forward during the weeks of March 15, 2004 and March 22, 2004 in Washington, D.C. unless counsel can arrange by March 5, 2004 for the depositions to proceed in Germany with the Special Master in attendance. The assurance is required because, as counsel acknowledge, the Special Master cannot attend and participate in the depositions without the express and unambiguous permission of the German authorities. The Court today reviewed the submissions previously submitted to the Special Master and then heard arguments from counsel, via conference call, with respect to Papst's appeal to this Court from the decision of the Special Master. The Court reaches the following conclusions:

1. The depositions of Georg Papst and Hans Dieter Papst are important and should go forward as promptly as possible. Indeed, in view of the concerns of counsel for Papst about their health, it is important that their testimony be preserved.

2. In light of the Special Master's experience to date with the depositions in this case and the conduct of counsel during depositions, it is essential that the Special Master attend the depositions of these important witnesses in person. Indeed, in view of the concern expressed by counsel for Papst that the stress of a deposition for Georg Papst might be too much for him because of his heart condition, the presence and supervision of the Special Master can serve to alleviate such stress.

3. In view of the medical conditions of Georg Papst and Hans Dieter Papst, the Court concurs with the Special Master and counsel that each deponent should be deposed for half a day (three hours each, excluding breaks) over a ten-day period.

4. If the proper assurances can be obtained, it would be preferable for the depositions to take place in Germany or in a country close to Germany. An alternative must be ordered, however, in the event that counsel cannot arrange by March 5, 2004 for the depositions to proceed in Germany or a nearby country with the express permission from that country's authorities for the Special Master to attend and participate. Counsel must cooperate in good faith in attempting to obtain the necessary permission by March 5, 2004.

5. Having reviewed the submissions of the parties, the medical evidence available, and the letters of the Special Master dated January 26, 2004 and February 13, 2004, the Court agrees with counsel for Minebea and the Special Master that taking the deposition of Georg Papst or requiring him to travel to the United States for deposition would not be life threatening; neither the travel nor the deposition is precluded by his health. Since Georg Papst is reportedly the person at Papst with settlement authority and since mediation will soon begin in the United States at the urging of Papst, the Court thinks it inconsistent of Papst to argue that

Georg Papst cannot travel to the United States for a deposition but can be available in the United States for mediation. Because Georg Papst appears to be a key witness for Minebea, the deposition will go forward as scheduled in Washington, D.C. during the weeks of March 15, 2004 and March 22, 2004, unless counsel can arrange by March 5, 2004 for the depositions to proceed in Germany or another country with the Special Master in attendance.

6. Hans Dieter Papst's health is clearly more fragile than Georg Papst's health. While it would be preferable to conduct his deposition near his home and close to his doctors, the Court agrees with the Special Master that counsel for Papst has not demonstrated that the health of Hans Dieter Papst will be impaired if his deposition must proceed in Washington, D.C. with testimony limited to three hours a day. To the extent that his memory has suffered as a result of his medical condition and that he suffers from early exhaustion and loses concentration after two or three hours, the Special Master will have the authority, in his discretion, to authorize frequent breaks and to limit the deposition to even less than three hours a day if the circumstances require. Appropriate medical attention can be arranged in advance in the Washington, D.C. area for Hans Dieter Papst if his counsel and his doctors think it necessary. The deposition of Hans Dieter Papst will go forward as scheduled in Washington, D.C. during the weeks of March 15, 2004 and March 22, 2004, unless counsel can arrange by March 5, 2004 for the deposition to proceed in Germany or another country with the Special Master in attendance.

For all of the foregoing reasons, the Court AFFIRMS the decision of the Special Master in this matter and DENIES Papst's motion for a protective order.

SO ORDERED.

DATE:

PAUL L. FRIEDMAN
United States District Judge